

**PROPOSED REGULATION LANGUAGE
ALTERNATIVE AND RENEWABLE FUELS
AND TECHNOLOGIES PROGRAM**

**TITLE 20 CALIFORNIA CODE OF
REGULATIONS
SECTIONS 3100 – 3108**

DRAFT REGULATIONS

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Arnold Schwarzenegger, Governor

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CHAPTER 12 Alternative and Renewable Fuel and Vehicle Technology Program Regulations

Article 1. General Provisions Regarding Project Funding

Section 3100 Advanced Vehicle Technology.

Projects that produce or manufacture vehicles and components as described in Health and Safety Code Section 44272 (c) shall be eligible for funding.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Section 44272 (a), Health and Safety Code. Reference: Section 44272 (a), (b), (c), Health and Safety Code.

Section 3101 Criteria for Project Funding.

- (a) One or more of the following criteria, as applicable to the funding application, shall be used to determine which projects will receive funding. Preference will be given to project applications that can best:

(1) Provide economic benefits to California by promoting California-based technology firms, new job creation, new business development, economic benefit to low income communities, avoidance of disproportionate impacts to disadvantaged communities, and increased state revenue.

(2) Drive new technology advancement for vehicles, vessels, engines, and other equipment, and promote the deployment of such technologies in the marketplace.

(3) Provide a measurable transition from the nearly exclusive use of petroleum fuels to a diverse portfolio of viable alternative fuels that meet California's petroleum reduction and alternative fuel use goals.

(4) Use existing or proposed fueling infrastructure to maximize the outcome of the project.

(5) Use alternative fuel blends of at least 20 percent, with additional preference for projects with higher blends.

(6) Provide the largest amount of non-state matching funds.

(7) Demonstrate the ability and capacity to successfully implement and complete the project proposed for program funding.

(8) Demonstrate technical feasibility and market readiness of the proposed technology.

(9) Demonstrate the cost-effectiveness of the proposed technology in achieving greenhouse gas emissions reduction.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Section 44272 (b), Health and Safety Code. Reference: Section 44272 (a), (b), (c), Health and Safety Code.

Section 3101.5 Sustainability Goals and Evaluation Criteria.

(a) As directed in Health and Safety Code Section 44271(a)(2), the commission establishes the following sustainability goals for the program. The sustainability goals described in this section shall guide the commission in ensuring that funded projects promote sustainable alternative fuels and vehicles and do not adversely affect natural resources. The criteria described in subpart (b) shall serve as the metrics by which the Commission identifies projects that best achieve the sustainability goals.

(1) The first sustainability goal shall be the substantial reduction of greenhouse gas emissions associated with California's transportation system to help meet California's 2020 and 2050 targets as defined in Health and Safety Code Section 38550 and the Governor's Executive Order S-03-05.

(2) The second sustainability goal shall be to protect the environment, including all natural resources, from the effects of alternative and renewable fuel development and promote the superior environmental performance of alternative and renewable fuels, infrastructure and vehicle technologies.

(3) The third sustainability goal shall be to enhance market and public acceptance of sustainably produced alternative and renewable fuels by developing, promoting, and creating incentives for the production of such fuels in accordance with certified sustainable production practices and standards as established by government agencies, academic institutions, and non-governmental organizations.

(b) In addition to the criteria listed in Section 3101, one or more of the following sustainability criteria shall be applied to each project, as appropriate, with the objective to fund only those projects that best exemplify attainment of the Commission's sustainability goals, promote sustainable alternative fuels and vehicles, and do not adversely affect natural resources. Greater preference will be given to projects that incorporate or demonstrate the greatest number of sustainability criteria.

(1) Strong preference will be given to projects that can best contribute to meeting California's climate change policy goals as described in Health and Safety Code Section 38550, the Governor's Executive Order S-03-05, and the Low Carbon Fuel Standard and that demonstrate the best potential for substantial reduction of greenhouse gas emissions associated with California's transportation system.

(A) Applicants must provide sufficient information to determine the greenhouse gas emissions profile of the proposed project on a full fuel-cycle basis, including an estimate for

greenhouse gas emissions from indirect land use changes, in accordance with the methodologies described in the Low Carbon Fuel Standard, or an alternative methodology approved by the Commission.

(B) Projects with the lowest greenhouse gas emissions from the petroleum baseline, as defined by the Air Resources Board for the Low Carbon Fuel Standard, will demonstrate the best potential to contribute to state climate change policies.

(C) Projects with greenhouse gas emissions that exceed the petroleum baseline, on a full fuel-cycle basis, would not be eligible for funding consideration.

(2) Strong preference will be given to projects that demonstrate environmental protection, natural resource preservation, and superior environmental performance, by the use of manufacturing, production or agricultural technologies and practices which are more energy efficient and less environmentally damaging than current standard practices and technologies for the production of petroleum fuels, production of basic agricultural commodities and extraction of natural resources when measured on a life-cycle basis. The commission will fund projects that best demonstrate and implement practices that preserve ecosystem integrity, protect and enhance the resiliency of natural ecosystems, and respect the physical carrying capacity limits of natural systems at the local, regional, and global scale.

(A) Projects that maximize the use of waste stream materials as their feedstock are examples of technologies that further environmental protection and natural resource preservation goals.

(B) The use of existing Best Management Practices developed by natural resource and pollution control agencies, academic institutions, or non-governmental organizations and that exceed applicable Best Available Control Technologies are examples of appropriate means to protect the environment and natural resources.

(C) For projects using purpose-grown energy crops, furtherance of environmental protection and natural resource preservation goals would be demonstrated by:

- i. Development and implementation of a sustainability best management practices plan developed by institutions such as the University of California at Davis.
- ii. Use of lands historically used for agricultural purposes.
- iii. Use of marginal crop lands that are not used for food crops and that do not displace or disrupt cropping patterns for food production.

iv. Use of crops uniquely suited to climate, water and natural resource constraints in California and the Arid West that require less irrigation water than commonly produced agricultural commodities.

(D) Infrastructure and agricultural projects that implement water efficiency and water use reduction measures, that use recycled or reclaimed water for industrial purposes, and that reduce or eliminate point source and non-point source wastewater discharge, are examples of appropriate resource protection practices.

(E) Projects that use renewable energy or cogeneration in the production, processing or distribution phase will demonstrate that the project implements environmental protection and natural resource preservation practices.

(F) Projects that use forest biomass resources as part of their feedstock, and that demonstrate the advancement of natural resource protection goals, are those that use forest biomass collection or harvesting practices that do not diminish the ecological values of forest stands, and that are consistent with forest restoration, fire risk management and ecosystem management goals.

(G) Projects that create benefits to state natural resources or that ameliorate degraded resources would demonstrate natural resource protection goals.

(H) Alternative fuel infrastructure projects that procure and distribute low carbon alternative fuels as described in 3101.5 (b)(1), or that are produced in accordance with the sustainability criteria described in sections 3101.5(b)(2) and (b)(3), would demonstrate furtherance of greenhouse gas reduction and natural resource protection goals.

(3) Preference will be given to projects which produce sustainable feedstocks, or produce or distribute alternative fuels, which strictly follow established government or third party sustainability certification standards for the production of alternative and renewable fuels.

(A) Examples of sustainability certification standards include, but are not limited to:

- i. Roundtable on Sustainable Biofuels
- ii. Council for Sustainable Biomass Production
- iii. Sustainable Biodiesel Alliance
- iv. Roundtable for Sustainable Palm Oil
- v. UK Renewable Fuel Transport Obligation
- vi. European Commission's Sustainability Criteria and Certification Systems for Biomass Production
- vii. Forest Stewardship Council

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Section 44271 (a)(1), (2), Health and Safety Code. Reference: Section 44271 (a)(1), (2), 44272 (a), (b), (c), Health and Safety Code.

Section 3102 Definitions.

For purposes of Section 3101, the following definitions shall apply:

(a) "Natural resources" include forest lands, range lands, waters and watersheds, biodiversity resources (fish, wildlife, and flora) and their prime habitats, coastal lands and waters, minerals, and prime agricultural lands.

(b) "Environmental performance" denotes the relative environmental efficiency and levels of environmental impacts from industrial facilities, agricultural operations or natural resource extraction activities. Facilities with high levels of environmental performance use fewer natural resource and energy inputs per unit of fuel output, and have lower environmental impacts, than low environmentally performing facilities.

(c) "Carrying capacity" is the ability of an air basin, watershed, ecosystem, or landscape area to withstand resource extraction or absorb pollution loading until its basic functions are impaired.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Section 44271 (a)(1), (2), Health and Safety Code. Reference: Section 44271 (a)(1), (2), 44272 (a), (b), (c), Health and Safety Code.

Section 3103 Funding Restrictions.

(a) A project shall not be eligible for funding if it is mandated by any local, regional, state, or federal law, rule, or regulation. If a project is one that helps the proposing entity meet a performance requirement mandated by local, regional, state, or federal law, rule, or regulation, the project shall not be eligible for funding. To the extent a project exceeds what is required for compliance with a legally enforceable requirement, it may receive funding for that part of the project that the applicant demonstrates is not mandated to meet the requirement. Credits generated by the excess, however, may not be used or sold by the proposing entity to offset a legally enforceable requirement, except to the extent allowed by subsection (b). For purposes of this section, a legally enforceable requirement refers to any requirement enforceable by a local, regional, state, or federal agency for the purpose of reducing the emission of one or more criteria pollutants, toxic air contaminants, or any greenhouse gas.

(b) A project that generates credits that the applicant plans to claim based on the reduction of criteria pollutants, toxic air contaminants, or greenhouse gases may not be eligible for funding unless all of the following occur:

- (1) the applicant seeks funding for only a portion of the project;
- (2) the applicant agrees in the funding agreement to discount emission credits at least in proportion to the amount of funding received;
- (3) the project satisfies one or more of the criteria in sections 3101 and 3101.5, as appropriate.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Reference: Section 44271 (c), Health and Safety Code.

Section 3104 Advisory Body.

The commission shall assign an appropriate policy committee to establish and maintain, as needed, an advisory committee for the Alternative and Renewable Fuel and Vehicle Technology Program. The advisory committee shall function as the advisory body required under Health and Safety Code Section 44271.5.

NOTE: Authority cited: Sections 25211, 25213 and 25214, Public Resources Code. Section 44271.5(a), (b), Health and Safety Code. Reference: Section 44271.5(a), (b), Health and Safety Code.

Section 3105 Designation of Advisory Committee Presiding Member.

The presiding member of the assigned policy committee shall serve as the presiding member of the advisory committee and shall preside over its public meetings.

NOTE: Authority cited: Sections 25211, 25213 and 25214, Public Resources Code. Section 44271.5(a), (b), Health and Safety Code. Reference: Section 44271.5(a), (b), Health and Safety Code.

Section 3106 Selection of Advisory Committee Members.

(a) The assigned policy committee shall solicit applications from persons who wish to serve as a representative from one of the interest groups or agencies identified in Health and Safety Code Section 44271.5, and may solicit applications from other persons who wish to represent interest groups beyond those listed in Health and Safety Code Section 44271.5.

(b) Anyone wishing to serve on the advisory committee by representing an interest group not identified in Health and Safety Code Section 44271.5 may apply to the assigned policy committee during any solicitation for applications. The assigned policy committee shall have the discretion to allow for one or more additional interest groups to be represented on the advisory committee. Such a determination shall consider whether representation of an additional interest group serves to diversify input from the advisory committee and whether

the applicant has particular knowledge or expertise that would benefit public discussions and recommendations.

(c) The assigned policy committee shall notify interested persons at least 14 days in advance of any opportunity to serve as a representative on the advisory committee. The notice shall describe the process for selecting representatives, any criteria that will be used to choose between two or more persons wishing to represent the same interest group, and the number of representatives to be selected. Those selected to serve on the advisory committee shall serve at the pleasure of the assigned policy committee, except that the policy committee shall ensure that each interest group identified in Health and Safety Code Section 44271.5 is represented on the advisory committee.

NOTE: Authority cited: 25211 and 25213, Public Resources Code. Section 44271.5(a), (b), Health and Safety Code. Reference: Section 44271.5(a), (b), Health and Safety Code.

Section 3107 Advisory Committee Duties.

(a) The advisory committee shall meet at least twice a year to assist in the development of an investment plan and its updates. The presiding member, in consultation with advisory committee members, shall decide when to hold advisory committee meetings and whether additional meetings are needed.

(b) The role of the advisory committee shall be to participate in one or more public discussions and arrive at public recommendations, whether by consensus or otherwise, regarding one or more elements of the investment plan. All public discussions and recommendations shall serve to inform and advise the assigned policy committee in the drafting of a proposed investment plan. The assigned policy committee shall annually propose an investment plan, its update, or the lack of need for an update to the commission for approval.

(c) Each advisory committee meeting shall be open to the public. No less than 10 calendar days prior to each meeting, notice of the meeting shall be posted on the commission's website and mailed or otherwise sent to interested persons. The commission shall establish a list of persons who request notice in writing.

NOTE: Authority cited: Sections 25211, 25213 and 25214, Public Resources Code. Section 44271.5(a), (b), Health and Safety Code. Reference: Sections 44271.5(a), (b), Health and Safety Code.

Section 3108 Purpose of Investment Plan.

(a) The investment plan shall be subject to commission approval and, as approved, shall determine priorities and opportunities for funding under the program for the ultimate purpose of developing and deploying innovative technologies that will transform the state's fuels and

vehicles to help attain the state's climate change policies and achieve the other goals specified in Health and Safety Code Section 44271 et seq.

(b) The assigned policy committee shall be responsible for the preparation and publication of a draft investment plan or update, taking into consideration recommendations and input from public meetings with the advisory committee.

(c) The draft investment plan or update shall be available for public review and comment no less than 30 days prior to the meeting at which the commission considers approving the proposed investment plan or update. During the period of public review, the assigned policy committee shall hold at least one public workshop on the draft investment plan or update. The assigned policy committee may revise the draft investment plan based on comments received during the public review period. At least 14 days prior to the business meeting at which the investment plan will be considered for approval, the assigned policy committee shall publish a proposed investment plan.

(d) As part of the investment plan, the commission shall identify where existing public and private funding dollars are being invested; determine where public funding can be strategically used to encourage and support identified funding priorities of the investment plan including, but not limited to, consideration of potential for commercial viability, competitiveness and production expansion of alternative fuels, assess the need for public funding based on where existing public and private funding dollars are already being invested, and analyze opportunities to leverage additional public or private funding.

(e) All funding decisions made by the commission shall be consistent with the investment plan, which shall be updated as needed annually. The investment plan shall serve to give public notice as to the types of projects that would be eligible to receive funding under the program and to specify the categories of funding allocations.

(f) If the commission determines that adjustments are needed in the allocations made to funding categories, the commission shall submit a report to the advisory committee documenting the conditions that lead to the adjustments.

NOTE: Authority cited: Sections 25211, 25213, Public Resources Code. Sections 44271.5(a), Health and Safety Code. Reference: Sections 44271.5(a), 44272 (a), (b), (c) Health and Safety Code.